Davis, 44 S. C. 195, 22 S. E. 178; *Martin's Heirs* v. *Martin*, 22 Ala. 86. But by the clear weight of authority the statutory right of dower may be lost by an equitable estoppel like other property rights. *Gilbert* v. *Reynolds*, 51 Ill. 513; *Norton* v. *Tufts*, 19 Utah 470, 57 Pac. 409. See 2 SCRIBNER, DOWER, 2 ed., 266 *ff.* In some jurisdictions, however, it has been held that there can be no equitable estoppel where the conveyance was made while the dower right was still inchoate. *Lohmeyer* v. *Durbin*, 213 Ill. 498, 72 N. E. 1118. See *Beeman* v. *Kitzman*, 124 Ia. 86, 93, 99 N. W. 171, 173. The basis of these decisions, that where there is no present right of control or possession, there is no present duty to assert any claim to the property, would seem hardly tenable. The duty to apprise a purchaser of one's rights must in fairness exist as well when those rights are enjoyable in the future as when enjoyable in the present. *Gilbert* v. *Reynolds*, *supra*; *Wright Lumber Co.* v. *McCord*, 145 Wis. 93, 128 N. W. 873. That mere silence, failure to assert one's rights, may give rise to an equitable estoppel is now well settled. *Wood* v. *Seely*, 32 N. Y. 105. See 2 POMEROY, EQ. JURIS., 3 ed., § 818. See 24 HARV. L. REV. 494. But in such case the party sought to be estopped must have had actual knowledge of his rights. *Bringard* v. *Stellwagen*, 41 Mich. 54, 1 N. W. 909; *Frederick* v. *Missouri River, etc. R. Co.*, 82 Mo. 402; *Trenton Banking Co.* v. *Duncan*, 86 N. Y. 221; *Dotson* v. *Merritt*, 141 Ky. 155, 132 S. W. 181. The court in the principal case argues that the plaintiff had such knowledge since the validity of a divorce, and thus the right to dower, is a matter of law, and everyone is presumed to know the law. That the state should impose a duty of being cognizant of one's rights, as well as the duty, when possessed of such knowledge, to warn innocent third parties of their existence is not inconceivable. But the law is settled otherwise where the estoppel is based on mere silence. See authorities *supra*. And to attempt to alter a doctrine based wholly upon equitable considerations by the introduction of a technical legal fiction is neither good law nor good legislation.

EASEMENTS — MODES OF ACQUISITION — IMPLIED GRANT AND RESERVATION — IMPLIED RESERVATION OF RIGHT TO FLOWAGE OF WATER IN MILL-RACE. — A tract of land included a mill and an artificial mill-race. This mill-race was used solely in connection with the mill. The owner conveyed part of the tract, containing the mill and the inlet and outlet of the mill-race, to a milling company. Later he conveyed the rest of the land, containing the middle of the race, to a town. The mill company dammed the race; and the town, claiming an easement by implication to the flowage of water in the race, destroyed the dam. The mill company seeks to recover. *Held*, that it may recover. *St. Mary's Milling Co.* v. *Town of St. Mary's*, 32 Dom. L. R. 105 (Ontario).

Where there is apparent and continuous user, that is, a quasi-easement, in one part of a tract of land for the benefit of another part, on the sale of the quasi-servient part of the land many states imply a grant back of an easement if the user was reasonably convenient for the enjoyment of the rest of the land. *Quinlan* v. *Noble*, 75 Cal. 250, 17 Pac. 69. *Cf. Taylor* v. *Wright*, 76 N. J. Eq. 121, 79 Atl. 433. Some states require for the grant back that the user be reasonably necessary to the grantor's land. *Wells* v. *Garbutt*, 132 N. Y. 430, 30 N. E. 978; *Powers* v. *Heffernan*, 233 Ill. 597, 84 S. E. 661. See 3 ILL. L. REV. 187. However, in England, Canada, and some of the states it is said that the grantor should not be able to derogate from his own grant; and there is no implied grant back to him unless the easement is strictly necessary for the land retained. *Ray* v. *Hazeldine*, [1904] 2 Ch. 17; *Attrill* v. *Platt*, 10 Can. Sup. Ct. 425, 480; *Covell* v. *Bright*, 157 Mich. 419, 122 N. W. 101; *Warren* v. *Blake*, 54 Me. 276, 286. An exception to this strict English rule has been suggested where before severance there were reciprocal quasi-easements between the two parts of the land. It was intimated that in such a case reasonable convenience is enough to establish a grant back as well as a grant. *Wheeldon* v. *Burroughs*, 12 Ch. D. 31, 59;

Union Lighterage Co. v. *London Graving Dock Co.*, [1902] 2 Ch. 557, 567. Cf. *Seymour* v. *Lewis*, 2 Beas. (N. J.) 439, 448; *Dunklee* v. *Wilton R. R. Co.*, 24 N. H. 489, 497. But in the principal case the necessity was non-existent at the time of the severance of the property. Consequently even the more lenient view will support the case.

EQUITABLE ELECTION — WHETHER HEIR CAN CLAIM BOTH LEGACY AND LAPSED RESIDUARY DEVISE. — An Iowa testator willed one half the residue of his property to his son and the other half to his wife. The son having predeceased the testator, the widow claims by descent the lapsed title to an undivided half of certain land in Minnesota which was part of the residue. By Minnesota law the widow, where there are no lineal descendants, is sole heir-at-law of her husband. Her claim is opposed by those who would have been heirs had there been no widow. They assert that the widow is barred from taking this property as heir because of an election she had made in Iowa to accept the provisions of the will. *Held*, that the widow must abide by her Iowa election, and her opponents are entitled to the lapsed interest in half the land. *In re McAllister's Estate*, 160 N. W. 1016 (Minn.).

It is true that an election at the domicil of the testator will be recognized as binding in another state. *Washburn* v. *Van Steenwyk*, 32 Minn. 336, 20 N. W. 324. See WHARTON, CONFLICT OF LAWS, 3 ed., § 599 *e*. But it would seem clear that when no election is necessary it should not, when made, affect the party's rights. *Collins* v. *Collins*, 126 Ind. 559, 25 N. E. 704. The doctrine of election is often said to have its basis in the testator's intention. To justify the result in the principal case, such intention must presumably be that the legatee take no more than has actually been bequeathed to him. Yet as a matter of fact the only legitimate presumption can be, that the legatee only take by the will if he does not proceed counter to its terms. The taking by intestacy of a legacy lapsed by the death of the legatee, would seem in no sense to contradict the testator's intention. It is more likely, however, that the rule rests simply on equitable principles. See 1 POMEROY, EQUITY, § 465; 23 HARV. L. REV. 138. Briefly stated, the rule is that equity will not allow a benefit under a will to be accepted while rights are likewise being asserted, which are antagonistic to the will, and injurious to a third party. So where a defect in the will prevents the legatee from taking, and the heir seeks not only his own legacy, but also the property which failed to pass to the other legatee, an election is required. *Brodie* v. *Barry*, 2 Ves. & B. 127; *Thellusson* v. *Woodford*, 13 Ves. 209. But where the testator merely declares that his heir take nothing, and fails to make any other disposition of the property, the heir will take by descent in spite of the expressed intention. *Gallagher* v. *Crooks*, 132 N. Y. 338, 30 N. E. 746. As, in the principal case, the legatee, to whom the lapsed legacy was bequeathed, has died, the taking by intestacy of this legacy in addition to other gifts by the will is conduct inequitable to no one, for it deprives no one of rights attempted to be conveyed by the will. So an election was not necessary. *Johnson* v. *Johnson*, 32 Minn. 513, 21 N. W. 725; *Hand* v. *Marcy*, 28 N. J. Eq. 59.

EQUITY — CANCELLATION — UNILATERAL MISTAKE OF FACT. — The defendant sent in a bid for a building contract in which by an honest mistake, without negligence, he omitted to take account of an important item, the bid consequently being much lower than he intended. The plaintiff, not knowing of the mistake, accepted the bid. Before the plaintiff had changed his position in any way, the defendant notified him of the mistake and refused to perform. The plaintiff having brought suit on the certified check deposited by the defendant to insure performance, the defendant seeks cancellation of it in equity. *Held*, that the check should be canceled. *St. Nicholas Church* v. *Kropp*, 160 N. W. 500 (Minn.).

For a discussion of this case, see NOTES, p. 637.